

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Brock Estel Osborn et al. § Group Art Unit: 2123
§
Serial No.: 09/897,556 § Examiner: Thangavelu, Kandasamy
§
Filed: July 3, 2001 § Confirmation No.: 9694
§
For: INTERACTIVE GRAPHICS-BASED § Atty. Docket: RD27987-1/YOD
ANALYSIS TOOL FOR § GERD:0501
VISUALIZING RELIABILITY OF A §
SYSTEM AND PERFORMING §
RELIABILITY ANALYSIS §
THEREON §

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/Patrick S. Yoder/

Patrick S. Yoder

REPLY BRIEF PURSUANT TO 37 C.F.R. §§ 41.41

As outlined in the Appeal Brief earlier filed in the present Appeal, all of the independent claims under appeal recite, in generally similar language, movie mode display of reliability analyses. The Examiner relied upon a cobbled combination of three references, two of which relate to reliability analyses, and one of which relates to visualization software for mechanical devices. In particular, the Examiner has continued to argue that Willoughby and Weinstock can be combined to provide reliability analysis and a hierarchical representation. Moreover, the Examiner has continued to argue that these references further combined with Goyal would

provide a movie mode or a similar representation of the results of reliability analyses. The combination is not supported by the references, nor is it even logical.

Appellants would first remind the Board that neither the claims nor the references themselves can be considered in a vacuum. The recent *KSR* decision did nothing to change the law or the standard of review insofar as the Board must consider the references for what they teach, in their entirety, and the reasonableness of the rejection made by the Examiner. Moreover, while *KSR* may have altered tests for consideration of an obviousness standard, the *Graham* factors must still be applied by the Examiner and by the Board. In the present case, there is simply no reasonable basis for extrapolating the teachings of the art to reach the claimed invention, absent the teachings of the present application itself.

Upon careful examination of the record, the Board will find that the Examiner has simply picked and chosen among teachings in the references using the pending claims as a road map. That is, in the Examiner's Answer, as in the previous Office Actions formulated by the Examiner, the Examiner admitted that Willoughby, Weinstock and Goyal "do not expressly" teach components of the invention. Appellants simply observe that, more correctly put, *these references do not teach these components at all.*

Firstly, it is unclear how or why the Examiner would combine Willoughby with Weinstock. The Examiner admits that Willoughby does not teach a reliability analysis component capable of performing reliability analysis on any level of a hierarchical representation. *See, e.g.*, Examiner's Answer, page 7. The Examiner would somehow complete Willoughby with Weinstock, however, which is said to teach a reliability analysis component that forms reliability analysis at any level of a hierarchical representation. If this is the case, the Examiner apparently would have found Weinstock sufficient to teach the invention up to this point without the use of Willoughby. No shortcomings of Weinstock are summarized by the Examiner except the failure of both Willoughby and Weinstock to teach a visualization component that provides a movie mode display. Appellants would request that the Board instruct the Examiner to clarify why the Examiner has relied upon the combination of

Willoughby and Weinstock. It is only through such clarification that the validity of the combination can be assessed.

Moreover, the Examiner would combine Goyal with the Willoughby/Weinstock combination to provide visualization of reliability analyses. Applicants have stressed throughout prosecution of the present application that Goyal offers visualizations in a completely different realm, and not in a manner that was ever attempted for reliability analyses prior to the present invention. As employed by the Examiner, Goyal provides no more than a cinematic-type display of solid models of mechanical parts. Appellants would submit that there is nothing unusual or unique, certainly at the time of the invention, in displaying mechanical parts in a simulation such that the parts can move, be displayed in various ways at various speeds, and so forth. Appellants have repeatedly stressed, however, that it is in the combination of Goyal with the other references that the Examiner's rejection is lacking. That is, the Examiner must provide some reasonable basis as to why a person skilled in the art would have found it obvious at the time the invention was made to have combined hierarchical representations of reliability analyses with a movie mode display. Certainly neither Willoughby nor Weinstock provide such teachings or any reasonable basis for a likelihood of success of the combination with mechanical simulation software.

The Examiner did not appear to base the combination on any of the conventional tests or any of the new tests for obviousness even under the *KSR* decision. Specifically on page 8 of the Examiner's Answer, the Examiner simply listed a variety of advantages that could flow from movie mode displays of reliability analyses, copying virtually *verbatim* from Goyal. The Examiner simply concluded that “[i]t would provide movie mode display of reliability analysis (simulation) results, so the movie could be analyzed later to focus on particular areas of interest.” Examiner's Answer, page 8. The Examiner has advanced no actual analysis of a teaching or suggestion whatsoever from the art, no motivation other than those available from the present application, and no arguments relating to how and why this combination would have been apparent to those skilled in the art at the time of the invention. For these reasons alone, the Examiner has failed to establish a *prima facie* case of obviousness.

Appellants note that on page 37 of the Examiner's Answer, the Examiner seemed expressly to provide argumentation regarding the motivation to combine Willoughby and Weinstock with the teachings of Goyal. However, Appellants also note that the Examiner simply copied word-for-word the argument advanced earlier in the Examiner's Answer, which is clearly deficient for the reasons summarized below. The addition of the word "motivation" at this location in the Examiner's Answer does nothing to bolster the arguments that are clearly lacking.

Finally, the Examiner, on pages 41 and 42 of the Examiner's Answer finally addressed the issue of whether Goyal is non-analogous art such that it cannot be reasonably combined with the other references. Rather than follow a systematic test for non-analogous art, which is available both from the case law and the MPEP, the Examiner simply stated that Goyal teaches a simulation based upon a mathematical model, and that reliability analysis also uses mathematical models. This most tenuous of links between the teachings of Goyal and the visualization of reliability analyses offered by the invention should be rejected by the Board. Rather, the true test is for non-analogous art is not whether there is any link whatsoever between the applied art and the invention at some abstract level, but whether the art would be relied upon by those skilled in the field of the invention, or whether the art was intended to solve similar problems. The Examiner has simply not established that Goyal is analogous art, and Appellants renew their request that it be discounted as such. For this additional reason, the Examiner had not established a *prima facie* case of obviousness of the claims under appeal.

Based upon the above points of clarification in conjunction with the arguments made in the previously filed Appeal Brief, Appellants believe that the claims are clearly allowable over the cited art. The Examiner's rejections, therefore, cannot stand. Appellants respectfully request that the Board withdraw the outstanding rejections and pass the present application to allowance.

Respectfully submitted,

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/Patrick S. Yoder/

Patrick S. Yoder
Reg. No. 37,479
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545